THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.2546 OF 2006

DATED: 12-03-2007

BETWEEN

Pappu Varma, S/o. Lalchand Varma,
R/o. Ashok Nagar, Monda Market,
Secunderabad.

...PETITIONER

AND

The Commissioner of Police,
Hyderabad and two others.

...RESPONDENTS

ORDER:

Petitioner submits that though a case against him in C.C.No.975 of 2001 on the file of the II Metropolitan Magistrate, Vijayawada ended in acquittal by order dated 30.07.2002 the suspect sheet opened against him during the pendency of the said case was not reviewed and discontinued. He further submits that the action of the respondents herein in continuing the suspect sheet based on the information furnished by the Vijayawada Police is illegal and arbitrary and violative of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. He further submits that except the said case, which ended in acquittal, neither there are any cases pending nor any cases being registered against him.

2. All the respondents have filed similar counters stating that the petitioner was involved in Cr.No.232 of 2001 under Sections 454, 380 and 411 of the Indian Penal Code, 1860, on the file of the I Town Police Station,

Vijayawada. Subsequently, on the orders of the Assistant Commissioner of Police, Vijayawada a suspect sheet was opened against him by the Sub-Inspector of Police, I Town Crime Police Station, Vijayawada on 06.01.2005 and the same was transferred to Market Police Station, Secunderabad for further surveillance on point of jurisdiction. It is further submitted that in Cr.No.232 of 2001 a charge sheet has been filed which was numbered as C.C.No.975 of 2001 on the file of the II Metropolitan Magistrate, Vijayawada, which ended in acquittal of the petitioner by order dated 30.07.2002. Except the said case the petitioner was not at all involved in any criminal cases under the jurisdiction of the respondents.

The suspect sheet opened against the petitioner by the I Town Police Station, Vijayawada, was transferred to the Market Police Station, Secunderabad and the Assistant Commissioner of Police, Mahankali Division ordered to continue the suspect sheet till 31.12.2006.

3. Admittedly no case is pending against the petitioner and in fact, the case in C.C.No.975 of 2001 also ended in acquittal in 2002, therefore, continuing the suspect sheet by the I Town Crime Police Station, Vijayawada, itself is illegal and arbitrary. Therefore, this Court while considering the said issue passed the following order dated 10.07.2006;

> "Counters filed.
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> Prima facie, the opening of the suspect sheet against the petitioner does not appear to be based on rational exercise of the power by the respondents. No explanation whatsoever is discernible in the counter affidavits filed by either the Commissioner of Police, the Dy. Commissioner of Police, or the Station House Officer as to the subjective facts which fertilized the objective satisfaction of the respondents that a suspect sheet should have been opened against the petitioner. The only event in which the petitioner's involvement is discernible is Cr.No.232 of 2001 of Vijayawada I Town Police Station. He was acquitted by the court of the II Metropolitan Magistrate, Vijayawada, in respect of the aforesaid crime in C.C.No.975 of 2001.
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> Nevertheless, not only was the suspect sheet opened in the Vijayawada I Town Police Station but the same was transferred to the Market Police Station, Secunderabad. The suspect sheet is said to have been continued as per the orders of the Assistant

Commissioner of Police, Mahankali Division till 31.12.2006. The counter affidavits assert the power of the respondents under Order 589(1) of Andhra Pradesh Police Manual.

If at all there be such an administrative order, it is an order conferring a power on specified authorities of the police hierarchy to open a suspect sheet. The question is not one of mere availability of power. The question is rather of the satisfaction that has gone into the exercise of power. Citizens of this Republic are under no constitutional disability to be subjected to inclusion in a suspect sheet maintained by the police authorities without a reasonable justification. Merely because the police have a power to include a person's particulars in a suspect sheet, would not justify the exercise of power. The respondents are obligated to set out the circumstances which were considered by the respondents for arriving at a rational satisfaction that the suspect sheet should be opened against the petitioner. In the absence of demonstrating such satisfaction, the opening or continuing of the suspect sheet would be wholly illegal and an arbitrary exercise of power and the respondents would be liable to pay exemplary costs for invading the privacy and liberty rights of the petitioner without the due process of law. This is a serious transgression of the petitioner's rights under Article 19 and 21 of the Constitution.

For the aforesaid reasons, to afford an opportunity to the respondents before considering imposition of costs and the quantification of such costs, 10 days time is granted for filing a further counter affidavit, if the respondents so choose.

Call after 10 days."

4. After this Court passed the aforesaid order none of the respondents have filed an explanation as to why appropriate costs shall not be imposed for their arbitrary action in continuing the suspect sheet. In fact, I am of the opinion that the petitioner ought to have impleaded the concerned Station House Officer and Assistant Commissioner of Police, Vijayawada as parties, so as to enable this Court to pass appropriate orders against them for continuing the suspect sheet even after the criminal case against the petitioner ended in acquittal. However, this Court already communicated in its earlier orders that continuance of the suspect sheet, without any review and without there being any cases pending against the petitioner, is illegal and arbitrary.

The writ petition is accordingly allowed with costs of Rs.5,000/-

(Rupees Five Thousand only) payable by the respondents to the petitioner.

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V. ESWARAIAH, J

March 12, 2007
DSK